

## **ARTICLE XI**

### **FRANCHISES AND PUBLIC UTILITIES**

#### **Control Over and Powers With Reference to City Property**

Section 102. The ownership, right of control and use of streets, highways, alleys, parks, public places and all other real property of the City of College Station is hereby declared to be inalienable to the city, except by ordinances passed by vote of the majority of the governing body of the City, as hereinafter provided; and no franchise or easement involving the right to use same, either along, across, over or under the same, shall ever be valid, unless expressly granted and exercised in compliance with the terms hereof, and of the ordinances granting the same. No act or omission of the City, its governing body, officers or agents shall be construed to confer or extend by estoppel or indirection, any right, franchise or easement not expressly granted by ordinance.

The City of College Station shall have the power, subject to the terms and provisions hereof, by ordinance to confer upon any person or corporation, the franchise or right to use the property of the city, as defined in the preceding paragraph, for the purpose of furnishing to the public any general public service, including heat, water, light, power, telephone service, refrigeration, steam, manufacture and distribution of ice, and the carriage of passengers or freight, within the city and its suburbs, over the streets, highways, and property of the City, or for any other purposes whereby a general service is to be furnished to the public for compensation or hire, to be paid to the franchise holder, whereby a right to use the streets, highways or other property of the City is necessary or proper; and generally to fix and regulate the rates, tolls and charges of all public utilities of every kind operating within the corporate limits of the City of College Station.

#### **Limitations**

Section 103. No exclusive franchise or privilege shall ever be granted; nor a franchise, nor a privilege to commence at any time after six (6) months subsequent to the taking effect of the ordinance granting the same; and no franchise shall be directly or indirectly extended beyond the term originally fixed by the ordinance granting the same, except as provided by the terms of this charter; nor, except as hereinafter provided, shall any franchise be granted to any person, firm or corporation, their associates, assignees or successors, to acquire the physical property, rights or franchise of another person, firm or corporation to whom or which a franchise has already been granted by the city, whereby the rights and properties held and used under such franchise are assigned to any other person, firm or corporation which holds a franchise from the city extending beyond the time of the expiration of the franchise of the person, firm or corporation selling such physical properties, rights or franchises; provided, however, that when it shall appear that the public welfare will be promoted by permitting or requiring the properties of two or more companies doing the same character of business to be under one common ownership the city may, in granting a franchise for such properties, allow or require the ownership of such properties to become vested in one ownership or one corporation,

provided that no debts or obligations of any of the companies so consolidated shall be assumed by the corporation, person or association of persons acquiring the ownership of such properties except such debts and obligations of said companies, or either of them as could at the time of the creation of such indebtedness, lawfully be created under the Constitution and laws of the State of Texas; and only to the extent that the assumption of such indebtedness is permitted under the provisions of the ordinance granting such franchise and the amount of such indebtedness shall be fixed or limited in such ordinance and the same shall not thereafter be increased except by such actual moneys as may hereafter be expended pursuant to the rules and regulations to be formulated by the city council from time to time.

### **Procedure**

Section 104. The City of College Station shall have the power by ordinance to grant any franchise or right mentioned in the preceding sections hereof, which ordinance, however, shall not be passed finally until it shall have been read at three (3) separate regular meetings of the City Council. No ordinance granting a franchise shall pass any reading except by a vote of the majority of the City Council, and such ordinance shall not take effect until sixty (60) days after its adoption on its third and final reading; provided, however, that if at any time before such ordinance shall finally take effect a petition shall be presented to the City Council signed by not less than forty (40) percent of the bona fide qualified voters of the City, then the City Council shall submit the question of the granting of such franchise to a vote of the qualified voters of the City at the next succeeding general election to be held in the City, provided that notice thereof shall be published in at least ten (10) successive issues of the official newspaper of the City of College Station prior to the holding of such election. Ballots shall be used briefly describing the franchise to be voted on and the terms thereof and containing the words, "For the granting of a franchise", and "Against the granting of a franchise". The vote shall be canvassed by the city council, and should it result that a majority of those voting thereon cast their votes "For the granting of a franchise", then by order entered in its minutes, the city council shall so declare and such franchise shall at once take effect. But should a majority of the votes be cast "Against granting a franchise", then the City Council by order entered in its minutes shall so declare and such franchise shall not take effect. In case a franchise is refused by the City Council, then the matter may be submitted to the qualified voters on petition, as hereinbefore provided, and a failure to finally pass on an application within six (6) months after the filing of such application shall be construed as a refusal. The City Council in passing an ordinance granting a franchise may provide therein that it shall not take effect until the same shall have been submitted to and approved by a majority of the qualified voters voting therein at a general election. All expenses of publication shall be borne by the applicant for the franchise, who shall make a deposit in advance to cover the estimated cost of publication, the amount of the deposit to be determined by the City Manager.

### **Term and Conditions**

Section 105. No determinate or fixed-term franchise shall ever be granted for a longer term than twenty-five (25) years; nor shall any right, privilege or franchise now in existence be extended beyond the period now fixed for its termination, directly or

indirectly, or through any means whatsoever, and any ordinance in violation or evasion of this prohibition shall be absolutely void; provided, however, that any corporation, person or association of persons now holding any franchise under any charter, charters or ordinances of the City of College Station may, with the consent of the city council surrender such franchise or franchises, subject to the provisions of the City Charter then in force, and take a new franchise under such charter, or a new franchise may be granted to a new company or another person with the privilege of acquiring the properties of such franchise holder upon the surrender of the franchise rights then held. No subsidiary franchise or franchises of any character appertaining or relating to any other franchise holder, or to any person, firm or corporation acting directly or indirectly for such franchise holder, shall be granted, and any such grant in violation of this prohibition shall be absolutely void to the extent of the excess in time beyond the life of such main franchise. No franchise, privilege or easement shall ever be used or operated so as to extend or enlarge any other franchise or privilege granted by the City except upon surrender of such original franchise as herein provided, and any violation of this prohibition shall operate as a forfeiture of each and all such franchise privileges or easements. No holder of a franchise heretofore or hereafter granted shall have a right (unless such right is granted in the franchise) to transfer or assign its properties and franchise to any other person, firm or corporation without the consent of the city council, and such consent when given shall not operate as the granting of a franchise or as a new franchise.

The City Council shall have the power to compel all persons, firms or corporations operating any public utilities in the city, whether operating under existing franchises, or franchises that may be hereafter granted, to extend their service, lines, pipes, etc., if the person to be benefited by such extension will pay the cost thereof, or if it can be shown that the revenue resulting from such extension will, within a reasonable time after same is made, pay a reasonable return on the investment, after making the customary allowance for depreciation.

All public utility franchises in the City of College Station shall be held whether expressed in the ordinance or not, subject to the right of the city, each of the following being a condition:

- (1) To repeal the same by ordinance at any time for failure to begin construction or operation within the time prescribed or otherwise to comply with the terms of the franchise, such power to be exercised only after due notice and hearing.
- (2) To require an adequate extension of plant and service, and the maintenance of the plant and fixtures at the highest reasonable standard of efficiency.
- (3) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates.
- (4) To prescribe the form of accounts kept by such utility; provided, that if the utility shall keep its accounts in accordance with the uniform system of accounts for said

utility prescribed by the National Association of Railroad and Public Utility Commissioners, the Federal Power Commission, the Federal Communications Commission, the Railroad Commission of Texas, their successor or successors, this shall be deemed sufficient compliance with this paragraph.

- (5) At any time to examine and audit the accounts and other records of any such utility and to require annual and other reports, including reports on local operations by each such public utility.
- (6) To impose such reasonable regulations and restrictions as may be deemed desirable or conducive to the safety, welfare and accommodation of the public.
- (7) To fix and regulate the price and rates for the service to be performed under the franchise.
- (8) To require such compensation and rental as may be permitted by the laws of the State of Texas.

Every public utility franchise hereafter granted shall be subject to the terms and conditions of this charter, whether such terms and conditions are specifically mentioned in the franchise or not.

#### **Utility Rates and Charges**

Section 106. The City Council shall have the power by ordinance to fix and regulate the price of water, gas, electric lights, electric power and steam heat, and to regulate and fix the fares, tolls and charges of local telephone service and charge of all public buses, carriages, hacks and vehicles of every kind, whether transporting passengers, freight or baggage; and generally to fix and regulate the rates, tolls and charges of all public utilities of every kind operating within the corporate limits of the City of College Station.

#### **Applicable to Streets and Highways**

Section 107. The right to the use of the public streets, highways, alleys and thoroughfares of this city which necessitates the digging up, or displacement thereof, for the installation of equipment, appliances or appurtenances, either on, above or below the surface of same to make the intended use thereof practicable, shall be deemed and considered “a franchise”, the granting of which shall be governed and controlled in the manner herein provided.

The use of such public streets, highways, alleys and thoroughfares of this city which does not require the digging up or similar interference with said streets, alleys or highways for the installation of equipment, appliances or appurtenances to make the intended use possible, shall be treated and considered as “a privilege”, subject to the control and disposition of the city council; and such privilege over and upon the public streets, alleys, highways and thoroughfares of the city shall not be granted to any person or corporation except when public necessity and convenience may require such use, and then only by ordinance passed by the city council.

All franchises for the use and occupancy of public streets, highways, alleys and thoroughfares of this city shall, in event public necessity and convenience so require, be subject to cancellation by the city council; and the City reserves the right to require all public utilities holding franchises from the City of College Station to conform to street grades, and alter or lower their underground structures to meet changing conditions.

#### **Public Service Corporation to File Annual Reports**

Section 108. It shall be the duty of the City Council to pass an ordinance requiring each public service corporation operating within the corporate limits of the city to file a sworn annual report of the receipts from the operation of such business for the current year showing how such receipts were expended, how much thereof for betterments or improvements, the rate of tolls or charges for services rendered to the public; and any other facts or information that the City Council may deem pertinent for its use in intelligently passing upon any questions that may arise between the City and the said public service corporations; all reports to be filed with the City Secretary and preserved for the use of the City Council.

#### **Option to Purchase**

Section 109. Any public utility franchise may be terminated by ordinance after ten (10) years after the beginning of operation, whenever the City Council shall determine to acquire by condemnation or otherwise the property of such utility necessarily used in or conveniently useful for the operation of the city within the city limits.

#### **Consent of Property Owners**

Section 110. The consent of abutting and adjacent property owners shall not be required for the construction, extension, maintenance or operation of any public utility, but nothing in this charter or in any franchise granted there under shall ever be construed to deprive any such property owner of any right of action for damage or injury to his property as now or hereafter provided by law.

#### **Extensions**

Section 111. All extensions of public utilities within the City limits shall become a part of the aggregate property of the public utility, and shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this Charter and in any original grant hereafter made. The right to use and maintain any extension shall terminate with the original grant and shall be terminable as provided in this charter. In case of an extension of a public utility operated under a franchise hereafter granted such right shall be terminable at the same time and under the same conditions as the original grant.

#### **Other Conditions**

Section 112. All franchises heretofore granted are recognized as contracts between the City of College Station and the grantee, and the contractual rights as contained in any such franchises shall not be impaired by the provisions of this charter, except that the power of the City of College Station to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved; and except the general power

of the City heretofore existing and herein provided for to regulate the rates and services of a grantee, which shall include the right to require proper and adequate extension of plant and service and the maintenance of the plant and fixtures at the highest reasonable standard of efficiency. Every public utility franchise hereinafter granted shall be held subject to all the terms and conditions contained in the various sections of this article, whether or not such terms are specifically mentioned in the franchise. Nothing in this charter shall operate to limit in any way, as specifically stated, the discretion of the City Council or the voters of the City in imposing terms or conditions as may be reasonable in connection with any franchise grant.

**Franchise Records**

Section 113. Within six (6) months after this charter takes effect every public utility and every owner of a public utility franchise shall file with the City Council, as may be prescribed by ordinance, certified copies of all franchises owned or claimed, or under which such utility is operated in the City of College Station. The City shall compile and maintain a public record of public utility franchises.